

Update: Domestic Violence Benchbook (3rd ed)

CHAPTER 4

Promoting Safety in Criminal Proceedings

4.4 Procedures for Issuing Conditional Release Orders

C. Required Findings by Judge or District Court Magistrate

Effective June 24, 2004, MCL 765.6 was amended by 2004 PA 167. Near the bottom of page 126, replace the quote of MCL 765.6(1) with the following:

“(1) Except as otherwise provided by law, a person accused of a criminal offense is entitled to bail. The amount of bail shall not be excessive. The court in fixing the amount of the bail shall consider and make findings on the record as to each of the following:

“(a) The seriousness of the offense charged.

“(b) The protection of the public.

“(c) The previous criminal record and the dangerousness of the person accused.

“(d) The probability or improbability of the person accused appearing at the trial of the cause.

“(2) If the court fixes a bail amount under subsection (1) and allows for the posting of a 10% deposit bond, the person accused may post bail by a surety bond in an amount equal to 1/4 of the full bail amount fixed under subsection (1) and executed by a surety approved by the court.”

CHAPTER 9

Statutory Firearms Restrictions in Domestic Violence Cases

9.5 Restrictions Arising from Conviction of a Felony

B. Michigan Restrictions on the Purchase or Possession of Firearms by Convicted Felons

On page 404, after the quote of MCL 750.224f(6), insert the following text:

In *People v Perkins*, ___ Mich App ___, ___ (2004), the Court of Appeals held that larceny from a person, MCL 750.357, constitutes a “specified felony” for the purposes of MCL 750.224f. The Court stated:

“Because a person whose property is stolen from his presence may take steps to retain possession, and the offender may react violently, we conclude that the offense of larceny from a person, *‘by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.’* MCL 750.224f(6)(i). We therefore hold that larceny from a person is a specified felony within the meaning of MCL 750.224f.”

CHAPTER 12

Domestic Violence and Access to Children

12.4 Joint Custody

D. Joint Custody Agreements

After the first full paragraph on page 501, insert the following text:

The Michigan Supreme Court, in *Harvey v Harvey*, ___ Mich ___, ___ (2004), clarified the responsibilities of the trial court in making a custody determination under the Child Custody Act, MCL 722.21 et. seq. The Court held that under the Child Custody Act, the circuit court is *required* to determine the best interests of the children before entering an order resolving the custody dispute. The Court clarified that this does not require the trial court to conduct a hearing or otherwise engage in fact-finding when the parties agree to custody. The Court stated:

“However, the deference due parties’ negotiated agreements does not diminish the court’s obligation to examine the best interest factors and make the child’s best interests paramount. MCL 722.25(1). Nothing in the Child Custody Act gives parents or any other party the power to exclude the legislatively mandated ‘best interests’ factors from the court’s deliberations once a custody dispute reaches the court.”